

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DUANE L. BERRY,

Plaintiff,

-against-

UNITED STATES DEPARTMENT OF THE
TREASURY; SEIZED FEDERAL
SECURITIES,

Defendants.

21-CV-1377 (LLS)

ORDER TO SHOW CAUSE UNDER
28 U.S.C. § 1915(g)

LOUIS L. STANTON, United States District Judge:

Plaintiff, a prisoner in Federal Medical Center, Butner, located in Butner, North Carolina, filed this action *pro se*. Plaintiff has not prepaid the filing fees for this action or filed an application to proceed *in forma pauperis* (IFP).¹ The Court therefore assumes that Plaintiff seeks IFP status and directs him to show cause why the Court should not deny him permission to proceed IFP under 28 U.S.C. § 1915(g), the Prison Litigation Reform Act's three-strikes provision.

PRISON LITIGATION REFORM ACT

The Prison Litigation Reform Act (PLRA) added the following three-strikes provision to the IFP statute:

In no event shall a prisoner bring a civil action...under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

¹ The fees to file a federal civil action in the United States District Court are \$402.00 – a \$350.00 filing fee plus a \$52.00 administrative fee.

§ 1915(g). The Court finds that Plaintiff has accumulated three or more strikes under the PLRA, and he is therefore barred under § 1915(g) from filing any actions IFP. *See Berry v. Powers*, No. 20-CV-2034 (N.D.TX. Sept. 9, 2020) (dismissing action with prejudice as frivolous); *Berry v. Lloyd*, No. 16-CT-3341 (E.D.N.C. July 24, 2017) (dismissing action for failure to state a claim); *Berry v. Lew*, No. 17-CV-0306 (D.D.C. Feb. 13, 2017) (dismissing action with prejudice as frivolous); *Berry v. Bridgewater Capital*, No. 17-CV-0013 (W.D.N.C. Feb. 8, 2017) (dismissing action as frivolous); *Berry v. Daly*, No. 16-CV-14495 (E.D.MI. Jan. 26, 2017) (dismissing action as frivolous); *Berry v. Lynch*, No. 16-CV-0982 (D.D.C. May 20, 2016) (dismissing action for failure to state a claim). Because Plaintiff is barred under § 1915(g), unless he is “under imminent danger of serious physical injury,” Plaintiff must pay the filing fees.

Plaintiff does not allege any facts suggesting that he is in imminent danger of serious physical injury.² Instead, Plaintiff identifies himself as a “FEDERAL TRUSTEE,” and he brings this action seeking forfeiture of the property of former President Donald J. Trump.

NOTICE AND OPPORTUNITY TO BE HEARD

A pro se litigant is generally entitled to notice and an opportunity to be heard before the Court issues a final decision that is unfavorable to the litigant. *See Snider v. Melindez*, 199 F.3d 108, 113 (2d Cir. 1999) (requirement of notice and opportunity to be heard “plays an important role in establishing the fairness and reliability” of the dismissal order, “avoids the risk that the court may overlook valid answers to its perception of defects in the plaintiff’s case,” and prevents unnecessary appeals and remands). The Court therefore grants Plaintiff leave to submit a declaration showing that, while a prisoner, he has not filed three or more cases that were

² An imminent danger is not one “that has dissipated by the time a complaint is filed,” *Pettus v. Morgenthau*, 554 F.3d 293, 296 (2d Cir. 2009); rather, it must be one “existing at the time the complaint is filed,” *Malik v. McGinnis*, 293 F.3d 559, 563 (2d Cir. 2002).

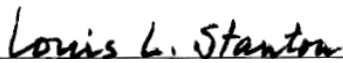
dismissed as frivolous, malicious, or for failure to state a claim. Plaintiff must submit this declaration within thirty days. If Plaintiff does not make this showing, or if he fails to respond to this order, the Court will deny Plaintiff permission to proceed IFP, dismiss the action without prejudice, and bar Plaintiff from filing future actions IFP while he is a prisoner.³

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court directs Plaintiff to show cause why the Court should not deny him permission to proceed IFP under the PLRA's three strikes provision, 28 U.S.C. § 1915(g). Plaintiff must file a declaration within thirty days explaining any reason why he should not be barred under the PLRA. A declaration form is attached to this order for Plaintiff's convenience. If Plaintiff does not show cause, or if he fails to respond to this order, the Court will deny Plaintiff permission to proceed IFP, dismiss this action without prejudice, and bar Plaintiff under § 1915(g) from filing future actions IFP while he is a prisoner.

SO ORDERED.

Dated: March 1, 2021
New York, New York



Louis L. Stanton
U.S.D.J.

³ Plaintiff is not barred from filing a new case by prepaying the filing fees.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the first and last name of each plaintiff or
petitioner.

Case No. _____ CV _____

-against-

Write the first and last name of each defendant or
respondent.

DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, _____, declare under penalty of perjury that the
following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court order. You may also refer to and attach any relevant documents.

Executed on (date)		Signature	
Name		Prison Identification # (if incarcerated)	
Address	City	State	Zip Code
Telephone Number (if available)		E-mail Address (if available)	